customers. As competition develops, however, there will be incentives on the part of the company to respond to the customers with competitive choice first, as they cut costs and get "mean and lean". An average service performance requirement might enable the company to respond to only those customers it had to, overlook others in the exchange, and still meet the minimum service levels on average. During a transition to a competitive environment, in which there will necessarily be customers with and without competitive choice in the near term, we believe it more appropriate to focus on the individual customer to insure that minimum levels of service are being met. This is not to say that, in the future, we would not find it appropriate to reevaluate the appropriateness of customer billing adjustments.

Specifically, we reject the assertions made by OTIA that the Commission had made no investigation to determine that circumstances warrant the proposed adjustments. We find these assertions quite the contrary. The magnitude of the failure of LECs to install and repair service on a timely basis is demonstrated by the substantial increase in the number of subscriber contacts received by the Commission's Pubic Interest Center. Specifically, as to installation, Public Interest Center contacts have nearly tripled since 1993. As to repair and quality, the Public Interest Center has seen an increase of 300 percent. Further, as set forth earlier in this order, the Commission contracted with NRRI to conduct customer surveys to determine what is important to customers. The results of those surveys not only support the application of MTSS to business customers, but actually indicate that business customers are particularly interested in a day and time commitment for repair. Moreover, the survey overwhelmingly supports a 24-hour out-of-service clearance. In adopting the standards herein, the Commission has undertaken an extensive analysis of all of this information as well as the comments filed by the consumer advocates. There is no doubt the circumstances warrant that such adjustments be in place.

We emphasize that we are not requiring perfect service, as clearly depicted in the length of the intervals, rather we are requiring that all customers, not just some arbitrary percentage of customers, be entitled to some minimum level of service. Moreover, we recognize that there are certain exceptions for company performance which is affected by circumstances beyond the control of the company, e.g., customer negligence or acts of God. In this vein, we have ensured that sufficient flexibility has been built into the standards. The Commission notes that the current MTSS (Rule 4901:1-5-20, O.A.C.) actually requires that all repair commitments shall be kept unless precluded by unusual repair requirements or other unavoidable factors. We find that the standards adopted herein can be administered with much greater ease than the rule proposed by staff and can be applied uniformly and consistently.

Moreover, the current MTSS provides that LECs proportionately credit a customer's account when the customer experiences a service outage in excess of 24 hours. This provision of the MTSS has been in effect for at least 20 years. Nevertheless, the Commission is aware that some LECs, in preparation for a competitive market, currently award customer credits for circumstances similar to those now triggering a

customer adjustment, the fact of which counters the industry's arguments made in this case. In fact, in addition to GTE's Service Performance Guarantee discussed above, several of these are tariffed. See, *The Vanlue Telephone Co.*, 96-475-TP-ATA; *The Oakwood Mutual Telephone Co.*, Case No. 96-476-TP-ATA; *Arcadia Telephone Co.*, Case No. 96-477-TP-ATA; *Continental Telephone Co.*, Case No. 96-478-TP-ATA; and *Little Miami Communications Corp.*, Case No. 96-479-TP-ATA. We note that some of these programs are based on higher standards than what is even required in the new standards. Clearly, the concept of customer billing adjustments is not new or novel.

We find the assertions of OTIA that the proposed customer credits are unlawful to lack merit. The Commission clearly has authority under Section 4905.231, Revised Code, to "ascertain and prescribe reasonable standards of telephone service." The Commission in this case is merely requiring that the LEC only charge a wronged customer the proper amount for the service rendered to that individual customer based on the reasonable standards we have prescribed for local telephone service. In doing so, we are not creating new legal precedent. We are simply following our own precedent in *OCC, on Behalf of Jim and Helen Heaton et. al. v. Columbus and Southern Ohio Electric Company*, Case No. 83-1279-EL-CSS (Opinion and Order, April 16, 1985) and *In the Matter of the Commission's Investigation into the Reconnection Charge Practices Ohio Gas Company,*, Case No. 82-95-GA-COI (Entry on Rehearing, May 4, 1983). In those cases, the Commission, in recognizing that it did not have jurisdiction to award compensatory or punitive damages, merely found that customers had paid amounts to obtain certain services in excess of what would have been paid had the service been offered appropriately and that they should be refunded accordingly. In adopting a customer billing adjustment mechanism in this case, we are merely doing the same; we are not awarding damages for a loss. Furthermore, the criteria used by the Commission in adopting a mechanism for adjustments tracks the criteria used in the above-referenced cases. First, the wronged customer is easily identifiable. Second, the amount of the adjustment required for both installation and repair is readily ascertainable. Third, the affected customers would not likely pursue a remedy in a court of law. To expect such customers to pursue remedies in a court of law would be inefficient and a waste of resources considering the relatively nominal amounts of the adjustments adopted in these standards. Finally, OTIA even admits that the Commission can make specific findings that would justify granting credits in certain circumstances. As stated above, in adopting standards, we will ensure that not only will adjustments be made under the appropriate circumstances, but that such adjustments will be made on a uniform and consistent basis.

OTIA and Ameritech both argue that the requirement of a credit could invite fraud on the part of dishonest customers. The Commission believes that this is unlikely, but possible. Should the affected company believe that an adjustment which is due a customer is unwarranted, it may file a UNC case with the Commission. The staff of the Public Interest Center would initially mediate the dispute, and if that process did not resolve the issue, the matter would be set for a formal hearing. If the customer can show that he was indeed out of service for a period of time in excess of 24 hours, or

that an installation or repair was not completed under the prescribed time frame, the burden would fall to the company to demonstrate why the adjustment should not be made.

OTIA further points out that under Section 4905.32, Revised Code, a public utility is required to charge the tariffed rate, and that a waiver of the tariffed rate is unlawful. The Commission does not dispute that a company must receive authority from the Commission to charge other than the tariffed rate. The Commission is well aware, however, that this requirement has not and is not currently being followed by the LECs. Some are offering credits to customers under approved tariffed programs, but the Commission is acutely aware of practices by several incumbent LECs of issuing credits to customers on an *ad hoc* basis. In many of these situations our own Public Information Center is involved. Thus, the companies cannot be heard to complain that billing adjustments are contrary to law. In fact, given the companies' existing practices of granting credits to certain customers, a potential discrimination claim could arise under Sections 4905.30, 4905.33 and 4905.35, Revised Code, if the Commission did not codify a rule governing billing adjustments. Nevertheless, as indicated above, the Commission in this case is merely requiring that the LEC only charge a wronged customer the proper amount for the service rendered to that individual customer based on the reasonable standards we have prescribed for local telephone service. Tariffed rates are approved by the Commission based on a certain level of service. In requiring that some amount other than the full tariffed amount be collected, we are finding that in certain circumstances a customer has not received this established level of service and should not pay the full amount for that service. Again, the billing adjustment standards which are being adopted in this order build on this current practice of the incumbent LECs, but assure that the credits are offered on a consistent and uniform basis.

Finally, Ameritech argues that the adjustments should be viewed as a LEC-chosen alternative to Commission enforcement of the MTSS. We disagree. The Commission would note that the MTSS only prescribe "minimum" standards. The Ohio Supreme Court has determined that meeting minimum service requirements does not mean that a telephone company is offering adequate service under Section 4905.26, Revised Code. Northwestern Telephone Service Co. v. Pub. Util. Comm., 175 Ohio St. 300. 194 N.E. 2d 434 (1963). The Commission clarifies that it does not waive its enforcement powers of the MTSS in any way.

After considering the comments made by Ameritech as to the excessive amount of the proposed billing adjustments for service installation after five days and the need for different billing adjustments for longer installation times, the Commission has reduced and tiered the billing adjustments, as shown by the changes made to section (C). Although, the Commission agrees with Sprint that some applicants provide more than five days notice prior to their desired installation date, the Commission believes that such advanced notice should not require a customer to wait past their requested installation date. If a company fails to install the requested service within five business

days, the customer's account shall be credited in the amount of at least one-half of the installation charges; if the company fails to install the service within 10 business days, or by the time the service was requested to be installed when more than 10 days notice has been given to the company, the entire amount of non-recurring installation charges shall be waived. Contrary to Edgemont/APAC's comments, the Commission does not believe the billing adjustments should be modified to accommodate applicants qualifying for TSA, SCA or USA, as these individuals already have their installation charges waived. However, the Commission intends to fully investigate any complaints of discrimination against TSA, SCA or USA applicants or subscribers involving longer installation times. Proposed section (D) has been revised to require that one-half of non-recurring installation or one-half of one month of local service charges be waived when the company misses an installation or repair appointment or commitment.

Also, after reviewing the industry's allegations of excessive credits for service outages and upon further consideration of the amount of the credits proposed by Staff, the Commission finds that the proposed credits are not proportional to the inconvenience a customer may experience. Accordingly, the Commission has instituted a tiered approach for the amount of the credit in the event of a service outage. The time period after which a customer is entitled to a credit shall remain at the currently effective period of 24 hours after a service outage is noticed by the company or reported by the consumer. The amount of the credit shall be the proportionate share of the customer's monthly bill for the local services rendered inoperative as a result of the outage. For service interruptions which exceed 24 hours but are less than 48 hours, the subscriber is entitled to a credit equal to the charge for one day service for all services rendered inoperative; for service interruptions which exceed 48 hours, but are less than 72 hours, the subscriber is entitled to a credit equal to the charge for one-third of one month's service for all services rendered inoperative; for service interruptions which exceed 72 hours but are less than 96 hours, the credit due the subscriber shall be equal to the charge for two-thirds of one month's service for all services rendered inoperative; for service interruptions which exceed 96 hours the credit due the subscriber shall be equal to one month's service for all services rendered inoperative. In adopting a tiered approach, the Commission recognizes, as did OCC, that tiering actually builds in an incentive to meet the time interval and thereby meet customer's needs as soon as practicable. A flat assessment, on the other hand, creates a perverse incentive to not meet a repair or installation interval. Finally, the Commission has conditioned the issuance of credits for missed appointments upon customer request. In doing so, we recognize that not all customers are affected to the same degree. When an appointment is made with the customer, the company is obliged to inform the customer that, if the appointment is missed, the customer is entitled to request the credit.

(E) Directory Omissions

OTIA and Sprint claim this provision invites the customer to a second opportunity to pursue a remedy. OTIA contends that a second opportunity to pursue remedies should be limited to residential customers. Ameritech protest the

implementation of this section, as Ameritech claims that the service credit is not related to a monthly service amount. Furthermore, Ameritech reasons that directory omissions are more appropriately handled between the subscriber and the company. Sprint is opposed to this section, as, according to Sprint, it prejudges fault for directory omissions.

The Commission finds Ameritech's assertion that the directory omission credit should be eliminated as unrelated to a monthly service amount to be without merit. The Commission maintains that the expense of publishing the white pages directory is part of the monthly local service charge. Accordingly, it is appropriate to credit a subscriber when white page listings are omitted from the directory. Contrary to the concern expressed by Sprint, the rule clearly states that the credit shall not apply where information was supplied after publication deadlines. However, in response to Sprint's objection to the proposed provision which would allow a subscriber to pursue additional remedies, the Commission determined that Rule 4901:1-5-18(E), O.A.C., should be revised to give the subscriber the option of either accepting the credit or pursuing other remedies.

(F) Rule 4901:1-5-18(F), O.A.C., outlines the manner in which the service provider can request the payment of and compensate the subscriber for incorrectly billed charges. Ameritech expressed reservation as to the inflexibility of the proposed rule to permit the company and the customer from agreeing on a time period to correct billing miscalculations. MCI states that the procedure outlined in this section is substantially different than that now followed by MCI. MCI recommends that carriers be afforded more discretion in this area as the proposed provision would be costly to implement since MCI does not currently have a system in place to prorate undercharges and does not provide interest on refunds. MCI posits that the Staff's recommendations on overcharges and undercharges is derived from Section 4933.28, Revised Code, which is applicable to residential gas service and electric companies. MCI claims that the manner in which telecommunication services are measured and billed are significantly different than the electric and gas industries and that in the case of residential customers the amount over- or undercharged will be relatively small as compared to gas or electric service. MCI believes that Rule 4901:1-5-18(F), O.A.C., should be eliminated because it does not properly serve customer satisfaction in a competitive environment. Like MCI, Sprint requests that each LEC be permitted to accommodate its customers' individual needs rather than requiring it to submit to uniform payment arrangements. As support, Sprint cites *Norman v. P.U.C.*, 62 OS2d 345 (1980). Sprint concludes that the *Norman* court held that in the absence of statutory authority, the Commission cannot limit a utility's backbilling practices.

While the Commission recognizes that some companies may be forced to adapt their procedures to conform to the billing requirements of the proposed section, the Commission finds such procedures are necessary to protect subscribers from undue financial hardship, especially when such billing discrepancies are under the control of the telecommunications carrier or its agent. The Commission has eliminated proposed

section (F)(1)(a), so as to require that all undercharges be recovered over the same period of time in which the undercharge was incurred unless the customer agrees to an alternative payment arrangement. However, Sprint's reliance on Norman is misplaced. The court in Norman did not find that the Commission lacks the authority to determine the term over which a public utility may collect an undercharge. Rather, *Norman* held that, absent statutory authority, the Commission cannot limit a utility's practice of backbilling to one year, on the basis that the utility should have discovered the billing inaccuracy within that period. The *Norman* decision did not speak to the terms under which the backbilled amount can be collected. Accordingly, the *Norman* decision does not apply to the proposed Rule. Accordingly, the Commission finds that the proposed Rule should be adopted as proposed, with the exception of the amendments and clarifications noted above.

(G) Proposed Rule 4901:1-5-18(G), O.A.C., required the service provider to make the necessary adjustment to the subscriber's bill on the next bill. Sprint suggest that the Rule be amended to state that the credit due appear on the "next possible billing statement". After further consideration of proposed section (G), and the comments submitted by Sprint, the Commission has changed the proposed Rule to require the adjustment appear within the next two billing periods. Section (G) has further been revised to give the subscriber the option of a credit or direct payment of the overcharge, if the subscriber's account is current.

**4901:1-5-19 DENIAL OR DISCONNECTION OF SERVICE**

Proposed Rule 4901:1-5-19, O.A.C., outlines, among other things, the notice requirements, some of the acceptable reasons and types of service which can be disconnected for nonpayment. The Commission acknowledges that MCI asserts that it is unable to separate non-local nonregulated and regulated services. However, it has been the long-standing policy of the Commission not to allow the disconnection of regulated service for the nonpayment of nonregulated service.[8]

Proposed section (C) requires that the subscriber be given five business days notice, under certain enumerated circumstances, if the service provider refuses to provide service or service is to be disconnected. Proposed Subsection (C)(5) of the proposed rule was eliminated as the procedures for the disconnection of service for nonpayment are addressed in Proposed Section I of this rule, which has been adopted. Subsection (C)(6) of the proposed Rule was eliminated as the procedures for the denial of service and disconnection as it relates to deposits are addressed in Rule 4901:1-5-14, O.A.C.

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[8] The Commission also notes that MCI's appeal with the Ohio Supreme Court as to the Commission's disconnection policy issued in Case No. 95-790-TP-COI, *In the Matter of the Commission Investigation into the Disconnection of Basic Local Exchange Service for the Nonpayment of Charges Associated with Services Other Than Basic Local Exchange Service*, S. Ct. No. 96-2775, was dismissed on procedural grounds on March 26, 1997.

Ameritech and CBG claim that companies should be able to disconnect for fraud. More specifically, Ameritech requests that there be no notice requirement in cases of suspected fraud. OCC objects to Ameritech's inclusion of fraud or suspected fraud as a reason to disconnect without notice and alleges that such a clause has a potential for abuse. Ashtabula also opposes Ameritech's proposal to add suspected fraud as a reason that companies can disconnect without notice.

In consideration of the comments of several carriers who request that carriers be allowed to disconnect without notice for suspected fraud, a subsection has been added to the adopted rules. The Commission also agrees with the comments of OCC, Edgemont/APAC and Ashtabula that the term "suspected fraud" is vague. Therefore, the Commission has revised the proposed rule, as reflected in Rule 4901:1-5-19 O.A.C., to require the LEC or IXC to notify or attempt to notify the subscriber when: the subscriber has committed a fraudulent practice, pursuant to the service provider's approved tariffs on file with the Commission; or a violation of, or failure to comply with, the Commission's regulations, the service provider's approved tariff, municipal ordinances or other applicable laws pertaining to telecommunication services, or pursuant to, the subscriber's refusal to permit the LEC access to equipment or facilities. The amendment requires that a subscriber who has committed a fraudulent practice as set forth in the company's tariff is entitled to notice.

(F) Medical Certification Procedures

Ameritech proposes that LECs be permitted to place toll restrictions on subscribers when payment arrangements are made for medical reasons. OCC replies that medical need customers probably need toll service more than other customers. The Commission refers Ameritech and any other service provider, to the procedures adopted for the implementation of toll caps set forth in adopted Rule 4901:1-5-14, O.A.C., and notes that any service provider that wishes to include medical reasons in its tariff for toll caps may do so. However, the Commission emphasizes that all such toll cap applications will be thoroughly and carefully scrutinized by the Commission.

(G) OCC alleges that subsection (G)(1) violates the Equal Credit Opportunity Act (ECOA) and recommends that it be amended. OCC also advocates language which would prohibit the refusal or disconnection of service by a telecommunications provider for a delinquency in payment owed to any other telecommunications provider. In its reply comments Edgemont/APAC agreed with OCC that section (G)(1) violates the ECOA which makes it illegal to refuse credit to one spouse because of the debt of the other spouse.

While the Commission acknowledges the assertions of OCC and Edgemont/APAC that this section violates the ECOA, the only case the Commission is aware of is a stipulated case which can not serve as precedent. This rule is intended to prevent name fraud by subscribers and shall be adopted as proposed by the Staff.

(H) Voluntary Third-Party Notice Prior To Disconnection Of Service

The Commission rejects CBG's argument that this rule is unnecessary in a competitive environment. While CBG claims that if this service is needed market demand will cause carriers to provide it, the Commission views this provision as a necessary component of universal service in that it allows additional customer notice.

(I) Payment Schedule And Disconnection Procedures For Nonpayment

Ameritech, CBG, CBT, Sprint and OTIA object to the extension of the due date of the bill from 14 days to 21 days after the postmark. The commentors argue, among other things, that the change will require costly changes to each carriers' billing system, cause costly delays in company receipts and customer confusion when the posting of payments has not occurred before the printing of the next bill, increase uncollectibles, and increase working capital requirements.

In light of the issues raised by the industry commentors, the Commission believes that the payment due date, as well as the period which must pass before the LEC or IXC may disconnect service for nonpayment, shall be 14 days, as is the case in the currently effective MTSS. Furthermore, the disconnect notice must be postmarked at least seven days before the scheduled disconnection date, even if disconnection is scheduled more than 14 days after the due date as is also the currently effective standard.

OCC proposes that language be added to proposed subsection (3)(f) to include on the disconnection notice that OCC is available to assist residential customers. The Commission finds that it is impractical to require language on the disconnection notice specifically for OCC. OCC only represents residential customers. If the Commission were to adopt OCC's proposal, carriers would have to distinguish between residential customers and nonresidential customers when issuing disconnection notices. Not only is this impracticable but could cause customer confusion. Therefore, OCC's proposal is rejected. However, it should be noted that, although the Commission is not including such information on the disconnection notice, to avoid customer confusion, since OCC only represents residential customers, such information has been included in the synopsis of the telephone customer bill of rights to be included in the directory, and the telephone customer bill of rights.

Furthermore, the Commission rejects OCC's suggestion that the disconnection notices include language to inform customers that disconnection cannot occur on a weekend or Federal holiday, as well as requiring the company to also attempt to contact the customer the day before or the day of disconnection in addition to the disconnect notice. Such a requirement would be an unjustified burden on the company. The Commission has, however, revised the notice of disconnection statement to inform the subscriber that the failure to pay the required and amount may result in the disconnection of local, toll or optional service, to address the issues raised by LECs and IXCs that the proposed notice would possibly encourage unscrupulous customers to

order unregulated and interexchange service without any intention of paying, since it would not threaten the subscriber's local service.

(J) Reconnection Of Local Exchange And Interexchange Service.

MCI states that the provision to require LECs and IXCs to restore service by 5:00 p.m. the next business day since they would have no control over the time period in which an ILEC can reconnect service physically disconnected at the central office disconnect unless this provision applies to carrier-to-carrier services.

The Commission rejects MCI's argument that they may not be able to reconnect by 5:00 p.m. of the next business day due to the underlying carriers performance. The Commission would note that end-users should receive the same quality of service whether service is provided by a facilities-based carrier or a non facilities-based carrier and also note that the issue of the standards as applied to reesellers has previously been addressed in this order. The Commission also clarified the proposed section to include payments made to the company's authorized agent for the reconnection of service.

**4901:1-5-20 DATA COLLECTION AND TRAFFIC MEASURING EQUIPMENT**

While there were no textual comments as to proposed Rule 4901:1-5-20, O.A.C., AT&T, CBG and TRA noted that this is one of several proposed operational and technical standards of which resellers are dependent upon the underlying carrier for compliance. Accordingly, this rule should be adopted as proposed by Staff.

**4901:1-5-21 CONSTRUCTION, MAINTENANCE OF PLANT AND EQUIPMENT, AND INTERRUPTION OF LOCAL EXCHANGE SERVICE**

(A) Ameritech proposes, and the Commission agrees, to clarify the intent of Subsection (A), by placing the word "appropriate" with "applicable". In addition, CBT believes that all local service providers must construct and maintain their plants and facilities in a manner that conforms to all state and federal codes to ensure continuity of service, uniformity in the quality of service furnished, and safety of persons and property. Contrary to CBT's obvious interpretation of this provision, the Commission is not implying that LECs violate applicable federal and/or state codes, building or safety codes. To the contrary, the Commission expects compliance with nationally recognized standards to ensure the quality of service and the safety of persons and property.

(B) CBT asks that the Commission eliminate proposed Rule 4901:1-5-21(B), O.A.C., which requires the LEC to notify, in advance, subscribers whose service must be interrupted due to maintenance when possible. According to CBT, the company makes every effort to perform maintenance at off hours, usually on Saturday night after midnight, when the volume of usage on the network is at its minimum. CBT further argues that it is not feasible from either a customer or a labor standpoint to adopt this proposal and CBT requests that the Commission eliminate it.

The Commission believes that many subscribers have come to depend on telecommunication services to communicate with friends and family, particularly in the event of an emergency, as well as professional colleagues or clients, such as medical professionals. Therefore, although in CBT's opinion repair is being performed at times when the volume of usage on the network is at its minimum, the necessity to notify subscribers still exists. Such reasonable and timely notification gives subscribers an opportunity to prepare themselves in the event of an emergency or other need to use telecommunication services. Accordingly, the Commission adopts this Rule as proposed.

(C) OTIA proposes that this section of proposed Rule 4901:1-5-21(C), O.A.C., be revised to require LECs to report the projected central office upgrades and prefix additions or revisions annually, or upon request, rather than semiannually. In recognition of the comments of OTIA and the fact that similar information is required in the annual reports of small local exchange companies (SLECs) pursuant to the procedures outlined in Case No. 89-564-TP-COI, In the Matter of the Commission Investigation Into the Implementation of Sections 4927.01 to 4927.05, Revised Code, as They Relate to Regulation of Small Local Exchange Telephone Companies. (89-564), SLECs, LECs with less than 15,000 access lines, shall continue to follow the procedures outlined in 89-564. Large LECs, however, have significant amounts of switching equipment in their service territories. Accordingly, the Commission believes that semiannual reporting by LECs with more than 15,000 access lines, is necessary to keep the Commission's Staff informed in a timely manner and is not unreasonable. Therefore, the Commission concludes that sections (C)(1) and (C)(2) be revised to reflect an annual reporting requirement for SLECs. The filing requirements for large LECs shall, however, be the same as the currently effective MTSS and as proposed herein.

**4901:1-5-22 EMERGENCY OPERATION**

(A) OTIA, CBT, Ameritech and Century propose, and the Commission agrees, that to better illustrate the type of equipment being referred to in this Rule that the term central office and associated switching equipment be utilized in lieu of the term service equipment.

(C) The Commission concludes that the second sentence of section (C) be eliminated. The information requested in the second sentence of section (C) is also addressed in proposed section (D) and submitted to the Commission's Emergency Outage Coordinator. There is no need to maintain a file with the Commission separate from the file maintained by the Commission's Emergency Outage Coordinator. Therefore, section (C) has been revised to require LECs to maintain a current emergency operation plan and make it available for commission inspection upon request.

(D) The Commission has revised proposed Rule 4901:1-5-22(D)(b), O.A.C., to recognize that a letter incorporating the required information is sufficient for compliance. Furthermore, the requirement that each LEC shall also submit all

revisions and updates to its plan and/or the new plan has been eliminated. The Commission determined that such a requirement to update the emergency plans was unnecessary.

OCC requests that Rule 4901:1-5-22(C), (D) and (E), O.A.C., be amended to require LECs to file and update with OCC, and permit inspection of, the emergency operations plans by the OCC. The Commission rejects OCC's request to have the information required in this Rule filed with and/or inspected by the OCC, pursuant to the above discussion in reference to Rule 4901:1-5-3, O.A.C.

**4901:1-5-23 CONSTRUCTION WORK NEAR LEC FACILITIES**

OTIA, Ameritech and Century propose an amendment of Rule 4901:1-5-22, O.A.C., to read as follows:

> Upon receipt of any written or verbal notification from a property owner, contractor or underground utility protection service or its successors of construction work which may affect the LEC's facilities the LEC shall promptly review and respond to such property owner, contractor or service with information appropriate to the work.

Proposed Rule 4901:1-5-23, O.A.C., was proposed by Staff in an attempt to reduce the number of telephone service outages caused by construction crews and citizens performing some type of construction. While the Commission certainly supports the intent of the Rule proposed by Staff, as well as the proposed amendment of OTIA, Ameritech and Century, the Commission concurs with the comments made by Sprint. As Sprint correctly asserts, the Commission has no jurisdiction to direct private citizens or construction contractors to contact the affected local exchange carrier prior to performing construction work. Furthermore, there is currently enacted "One Call Utility Protection Service" legislation which clearly encompasses the intent of this Rule.[9] Accordingly, the Commission concludes there is no need for duplication and this Rule should be deleted in its entirety.

**4901:1-5-24 TRAFFIC AND TRANSMISSION REQUIREMENTS**

Ameritech asserts that the transmission quality for voice band loss and noise is primarily an analog measurement. Further, Ameritech asserts that, with the increasing deployment of digital technology in the network, the usefulness of keeping reporting and/or monitoring requirements for analog transmission quality is questionable. Ameritech, therefore, concludes that this requirement should be deleted. However, the Commission contends that the requirements of subsection (A) are relevant.

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9 Sections 153.64 and 3781.25 - 3781.32, Revised Code.

Transmission quality for voice band loss and noise may be primarily an analog measurement, but there are still numerous analog switches and analog loops deployed in the state of Ohio, especially in rural areas. Furthermore, the Commission believes that at least in the near future such will continue to be the case after the proposed standards go into effect. Accordingly, the Commission finds that in light of the fact that these Rules will be reviewed two years after they become effective, that the requirement is appropriate and not overly burdensome. Accordingly, proposed Rule 4901:1-5-24, O.A.C., should be adopted as proposed by Staff with two minor clarifications and adopted as Rule 4901:1-5-23, O.A.C. The term "applicable" should replace "appropriate" in subsection (A) and a requirement shall be added for local call completion.

Ms. Minnick contends that, with the computer age upon us, a minimum standard baud rate must be addressed and argues that a baud rate of 28,000 should be required to meet today's standards. The minimum baud rate issue was thoroughly addressing in the 95-845 proceeding and established by the Commission at 14,400 bits per second.[10] Accordingly, the issue has been recently and thoroughly discussed and need not be repeated in this proceeding. Furthermore, as Sprint asserts this matter is now on appeal at the Ohio Supreme Court. Therefore, the proposal to impose a standard baud rate of 28,000 is rejected.

**4901:1-5-25 MINIMUMSERVICE, QUALITY AND ADEQUACY OF SERVICE LEVELS FOR LOCAL EXCHANGE COMPANIES**

Proposed Rule 4901:1-5-25, O.A.C., which is adopted Rule 4901:1-5-24, O.A.C., with the revisions discussed below, will be applicable to ILECs on October 1, 1997, and to NECs on January 1, 1998 pursuant to the Interim Rule adopted as Rule 4901:1-5-25, O.A.C., .

The Commission takes issue with the contention of OTIA and Ameritech that proposed Rule 4901:1-5-25, O.A.C., requires perfection. As OCC points out, perfection implies that service problems would never occur. The proposed rule does not approach such a requirement for perfection. If the proposed installation standard, for example, required perfection, same day installations would be required rather than permitting installation within five business days.

The Commission also disagrees, as does OCC, with comments by TRA, AT&T, and MCI, and reply comments by CBG and NEXTLINK, that non-facilities based NECs resellers should not be held responsible for maintaining compliance with the requirements of this rule since they are dependent upon their respective ILECs to achieve such compliance. It is the Commission's understanding that resellers want their end-user subscribers to perceive them as their supplier of local telephone service. Such a perception would entitle subscribers to hold their resellers responsible for the quality of their telephone service. Accordingly, the Commission believes holding the resellers responsible is the most effective way to ensure good service. However, the

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[10] See The Entry on Rehearing issued on November 7, 1996 at 52-54.

Commission is not opposed to allowing the non-facilities based providers to take whatever actions are legally available to secure adequate support from their respective ILECs. Accordingly, the Commission again notes that the minimum standards adopted under this rule shall be incorporated into all interconnection agreements, to the extent that no such standards were incorporated into the interconnection agreement or such standards in the interconnection agreement do not meet the level of the MTSS adopted herein, and, therefore, shall govern the carrier-to-carrier relationship.

The Commission believes GTE's concerns that some of the Rule 4901:1-5-25, O.A.C., standards fail to consider the potential impacts of natural disasters and other environmental impacts are unwarranted. Since the major consequences of non-compliance with proposed Rule 4901:1-5-25, O.A.C., involve customer billing adjustments, which are prescribed in adopted Rule 4901:1-5-18, O.A.C, the Commission has added and clarified various exceptions in that rule which address GTE's concerns, while removing such exceptions from the corresponding provisions of proposed Rule 4901:1-5-25, O.A.C. Removing such exceptions will permit company records to show the full scope of customer trouble, while billing adjustments will apply only in the absence of the applicable exceptions.

The Commission sympathizes with CBG's assertion that the ILECs should be required to keep detailed records of their performance as it relates to each of the resellers it serves. The Commission believes that the amended record-keeping criteria appearing in section (A) of the adopted rule will help address CBG's concerns. The Commission maintains, however, that there are inherent incentives for ILECs, as well as resellers, to maintain both detailed and summary records of their transactions regarding each affected end-user in order to ensure compliance not only with MTSS, but also with our local service guidelines and associated FCC regulations. ILECs and resellers alike will also need such records for self-protection in carrier-to-carrier service quality disputes. The Commission maintains that resellers, such as CBG, are in a good position to develop, collect and maintain the type of records they need to protect themselves.

The Commission also sympathizes with Ashtabula's concerns that proposed Rule 4901:1-5-25, O.A.C., requirements should not result in different levels of service to subscribers in different portions of the LEC's service territory. Assuming "levels of service" means the kinds of service quality addressed in proposed Rules 4901:1-5-25 and 4901:1-5-18, O.A.C., the Commission believes these standards and their associated billing adjustments provisions will have the effect of motivating the LECs to provide good service to all subscribers across their service territories. Finally, the Commission agrees with Ashtabula's comment that competition is not yet here, and until it is, the requirements of proposed Rule 4901:1-5-25, O.A.C., are necessary.

After due consideration, the Commission agrees with OTIA, Ameritech, and GTE that various detailed record-keeping requirements associated with proposed Rule 4901:1-5-25, O.A.C., i.e., standards for repair, installation, and answer time are overly prescriptive. To address this problem, the Commission has developed general criteria

which would replace the proposed detailed requirements. The new criteria would delineate the objectives such records should meet. Once these proposed requirements are effective the Commission expects to periodically review LEC records to ensure they meet the prescribed criteria.

(B) REPAIR.

(1) The Commission disagrees with OTIA's contention that prohibiting the downgrade of an service interruption report places unnecessary burdens on the LEC. It is the Commission's understanding that LECs have the ability to independently test and determine, at the time of the report, whether a given trouble is service interruption reports or service-affecting. The Commission believes that, once such a determination has been made, it is reasonable to prohibit any subsequent downgrading of out-of-service reports to service-affecting. It is the Commission's understanding that such downgrading might be attempted, for example, when wet cable dries out and temporarily "restores" service until the next rain occurs. Since in this example such "restoration" is only temporary and an out-of-service condition did exist at the time of the report, a subsequent downgrade to service affecting is inappropriate.

Further, the Commission takes issue with Ameritech's contention that notification time for on-premise trouble should be extended from 24 to 48 hours. It is the Commission's understanding that in many cases, the subscriber is dependent upon the LEC to diagnose and determine whether the problem is located inside or outside the premise. In such cases, LECs owe their subscribers the same 24-hour response time for this notification as they would for a fully-regulated out-of-service repair. Also, in regards to the notification, the Commission agrees with GTE in its opposition to OCC's recommendation that the words "or attempt to notify the subscriber" be replaced by "notify the subscriber." The Commission considers such a change unreasonable since it would be impossible for the LEC to directly notify the subscriber if his/her phone were out of order, and no other telephone number at which the subscriber could be contacted was provided. However, the Commission expects LECs to make a bona fide attempt to notify the customer, using door hangers where necessary.

The Commission agrees with Edgemont/APAC's contention that the time limit for investigating trouble reports should be reduced from the 10 days proposed to three days, as is currently required. The Commission agrees with Edgemont that requiring the LEC to investigate repair reports within ten days rather than three days is not a reasonable standard. Accordingly, the Commission finds that proposed section (B)(1) should be amended to require LECs to conduct thorough investigations of all trouble reports within three days rather than 10 days and eliminate the reference to computation of service interruption time as well as the 24-hour notification exception for subscribers with an installed network interface device.

(2) The Commission is sensitive to Ameritech's concerns about the need for clarification on what should be counted as a trouble report for the purpose of calculating

the trouble report rate. In response to that concern, the Commission has excluded subsequent reports and those involving non-regulated service. The Commission considers the term "non-trouble" to be already excluded from this Rule by implication. The Commission does not believe reports due to natural disasters, cable cuts, or damage by third parties should be excluded, since that would mask the true magnitude of the regulated trouble affecting subscribers. The Commission is also sympathetic to concerns raised by GTE and NEXTLINK that compliance with this Rule would be more difficult if uncontrollable factors such as natural disasters are not excluded. The Commission maintains, however, that LECs could easily explain any such uncontrollable factors and thus avoid any further regulatory consequences. Therefore, the Commission has added a requirement for the LEC to be prepared to explain the causes for any trouble report rate exceeding the standard and describe any corrective actions undertaken.

(3) The Commission disagrees with CBT's suggestion that subsection (3) should define the term "non-emergency" repair service. We prefer to allow the LECs to use their own good judgment in determining whether the urgency of a service interruption mandates working on a Sunday or holiday. Accordingly, however, the Commission does not agree with Sprint's contention that subsection (3) arbitrarily extends the LEC's hours of operation. The Commission notes that the NRRI survey results support out-of-service clearance times consistent with performing such repairs on Saturdays.

(4) Although Ameritech states that it can comply with the 18-month record retention Rule on a going-forward basis, it advises the Commission to carefully consider imposing any additional burdens (i.e. reconstructing past data) simply to satisfy regulatory requirements. The Commission sympathizes with Ameritech's concern about the possibility of having to reconstruct prior records to comply with any new recordkeeping requirements. It is not the Commission's intention for any such requirements to be applied retroactively. As is discussed under section (A), the Commission has also decided to omit specific prescriptive recordkeeping requirements in favor of the general record-keeping criteria stated in the revised section (A). However, the Commission does have a concern regarding the affect on subscribers of repeat trouble reports, and has, therefore, formalized a requirement for their minimization in a revised subsection (B)(4). Further the Commission sympathizes with Ameritech's concern about the possibility of having to reconstruct prior records to comply with any new recordkeeping requirements. It is not the Commission's intention for any such requirements to be applied retroactively.

(5), (6) and (7) In light of the issues raised by the industry, as discussed above in this Rule, the Commission has decided to omit specific prescriptive recordkeeping requirements in favor of the general recordkeeping criteria stated in the revised section (A). The Commission believes the provisions of the revised section (A) will cover the substance of OCC's request for a trouble report item called "identification of trouble diagnosed."

(8) The Commission does not agree with OCC's contention that LEC's should be required to provide cellular phones to subscribers with medical conditions who are out of service for over eight hours, in light of the FCC restrictions associated with such an offer.[11] The Commission finds that it is sufficient to grant restoration priority to subscribers with such medical conditions. The Commission has also amended subsection (8) to require the LEC's restoration priority list to include other utilities, irrespective of whether the other utilities are regulated by the Commission.

(9) and (10) The Commission disagrees with comments from OTIA, Ameritech and CBT that this requirement is unreasonable or should be relaxed to require that only 90 percent of out-of-service trouble be cleared in 24 hours. The Commission believes a 90 percent standard would leave some customers unprotected if they were in the 10 percent "missed" that is implied by a 90 percent standard.

The Commission also disagrees with Ameritech's comment and CBG's reply, that there should be a single 36-hour average standard for all trouble reports, out-of-service and service-affecting. The Commission believes it is more important to restore out-of-service trouble, which should take priority over service-affecting trouble. The Commission believes the need for a 24-hour standard is supported by the NRRI survey results indicating that more than 80 percent of residential and over 90 percent of business customers felt they should not have to wait more than 24 hours for restoration of their telephone service. Although the Commission sympathizes with CBT's claim that it would have to increase its work force in order to meet the proposed 24-hour out-of-service clearance standard, the Commission believes that given the above NRRI results, LECs would be forced to perform as well even without such a rule or lose customers to competition.

In addition, the Commission sympathizes with concerns voiced by Ameritech and GTE that the proposed 48-hour clearance standard for service affecting trouble is too stringent. In response to these concerns, the Commission has increased clearance time to 72 hours, this will allow the LEC's to prioritize the clearance of out-of-service trouble over service-affecting trouble.

Further, the Commission disagrees with comments by CBT and Sprint that there should be no standard for clearance of service-affecting trouble. The Commission believes the absence of such a standard would allow such troubles to continue and become chronic.

(11) Although the Commission understands the comments of OTIA, Ameritech, and GTE about the stringency of the proposed standard for keeping repair

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[11] The Commission is aware, however that Ameritech has agreed to provide cellular phones to subscribers with medical conditions pursuant to the stipulation approved in Case No. 95-711-TP-COI, *In the Matter of the Commission's Investigation into Ameritech Ohio's compliance with Several Subsections of Chapter 4901:1-5-, O.A.C., Concerning the Minimum Local Exchange Company Telephone Service Standards*, Finding and Order issued October 5, 1995.

appointments and commitments, the Commission is compelled to enact the standard because of customers who have complained to the Public Interest Center about taking off work, sometimes without pay, to wait in vain for the repair technician to arrive. The Commission concludes that it is not fair to such customers for the Rules to imply that it is acceptable for LEC's customers to be left waiting 10 or 15 percent of the time as would be the case with a 90 or 85 percent standard.

Furthermore, the Commission disagrees with assertions by Ameritech and CBT that the four-hour appointment window should be relaxed to eight hours unless the customer requests otherwise. Such a provision would create an unfair double-standard: an eight-hour window for customers who did not know they could get better service and a four-hour standard for the more knowledgeable or assertive customers.

In response to OCC's concerns that the language which created a four-hour range around the appointment time might be interpreted as allowing an eight-hour appointment Window, the Commission has clarified the language of this provision to specify morning or afternoon appointment windows.

(C) Local Service Installation

(1) The Commission disagrees with Ameritech's comment that the five-day service installation rule should be relaxed to a 90 percent requirement. The Commission believes it would be unfair to customers to find it acceptable for 10 percent of installations to be late. However, the Commission agrees that an exception should apply, as recommended by Ameritech and GTE, for new service in those areas where no facilities previously existed. Accordingly, such an exemption has been added in connection with the granting of credits in Rule 18.

Further, in response to the various concerns expressed by OTIA, Ameritech, Sprint, and GTE, the Commission has replaced its earlier proposed requirements for specific alternative service provisions with a more general requirement to attempt some form of alternative service. In addition, we have extended the associated time threshold from 10 to 15 business days.

(2) The Commission disagrees with comments by Ameritech and GTE that the requirement for keeping on-premise installation appointments should be relaxed to a 90 percent standard. As previously stated, the Commission finds adopting a 90 percent standard to be unfair to the 10 percent of customers who would be missed.

(3) As is discussed above in this Rule, the Commission has decided to omit specific prescriptive recordkeeping requirements in favor of the general record-keeping criteria.

(4) Regrade Of Service

GTE believes the standard time for installing service regrades in 30 days would be unreasonable unless it specifies the qualification that facilities are available for such a regrade. The Commission disagrees. The Commission believes 30 days should be sufficient for installing facilities to support the regrade. If this is not the case, a LEC has the option to submit a request for waiver along with sufficient and appropriate justification.

(D) Answer Time

(1) CBT believes the proposed 10-second answer time for directory assistance is unreasonable because it is unsupported by customer data. CBT says its own customer survey supports an average speed of answer standard of between 45 and 60 seconds. Although the proposed average-speed-of-answer measure is less stringent than the current 90 percent requirement, the Commission has decided to increase both the directory assistance and operator answer time standard to 20 seconds.

(3) CBT urges the Commission to alter the wording at the end of subsection (3) to read: "The subscriber shall be able to rearrange appointments using the system or with a live attendant. The Commission finds that this subsection is appropriate as proposed. It appears that Staff's intent is that the customer be able to negotiate appointments with the "system" as well as with a live representative. CBT's recommended language seems to imply an alternative of "if not with the system, then with the live representative." The Commission finds the initial language and intent of the proposed rule is correct and should be retained.

(4) In response to Sprint's concerns that advertising should not be prohibited as long as it does not interfere with the quality of service delivered, the Commission has eliminated the proposed prohibition of advertising during the answer time interval.

(5) The Commission has considered concerns voiced by the industry that there are technical problems associated with measuring business and repair call answer time from the point the last digit of the LEC's phone number is dialed. As a result, the Commission has modified such measurements to begin with the first ring at the LEC's business or repair office. Thus, answer time would include: (1) ring time at the small LECs having no automated equipment; (2) ring time + time waiting-in-queue at medium-sized LECs having only an automatic call distributor (ACD); or (3) ring time + time waiting-in-queue + menu-selection time at large LECs having a voice-response system and an ACD. The Commission recognizes, that, as noted by OTIA, many of its members lack the ability to measure answer time at their offices. As is the case with the current rules, in these situations, compliance could be measured manually on a sampling basis.

(7) As previously stated in reference to Rule 25, the Commission has decided to omit specific prescriptive record-keeping requirements in favor of the general record-keeping criteria.

**4901:1-5-26 ENFORCEMENT**

The intent of proposed Rule 4901:1-5-26, O.A.C., is to clarify that a telecommunications provider who violates this chapter may be subject to Section 4905.54, Revised Code, et. seq., or Section 4905.381, Revised Code.

Ms. Minnick states that the allowable annual rates of return on equity are not enforced and proposes that penalties be included in the MTSS for an entity exceeding the allowable rate of return, possibly in the form of refunds to customers. Ms. Minnick's proposal is not a service standard and, therefore, is beyond the scope of this docket and the service standards proposed herein. However, the Commission believes it is important to note that, pursuant to Section 4905.46(E), Revised Code, no telephone company can declare a cash, stock or bond dividend or distribution while in violation of a Commission order, or if there has been a finding of inadequate service, unless after a hearing and notice, the Commission finds that such dividend or distribution will in no way postpone compliance with the order or affect the adequacy of service rendered.

OTIA, Ameritech and AT&T argue that the Commission lacks the statutory authority to require automatic refunds, waivers and assess forfeitures other than those specific mechanisms set forth in Sections 4905.56-4905.59, Revised Code. Some commentors argue that proposed Rule 4901:1-5-26, O.A.C., is illegal on its face, pursuant to Sections 4905.56-4905.59, Revised Code. OTIA argues that the Commission lacks the jurisdiction and the authority to assess damages or to levy forfeitures in the absence of specific statutory authority, which has only been granted as to transportation, transportation assessments and hazardous material. As with numerous other operational and technical standards, TRA and AT&T express concerns with proposed Rule 4901:1-5-26, O.A.C., as they contend that it may immediately place non-facilities based resellers in non-compliance. TRA, AT&T and other NECs argue that penalties for violation of this chapter should be tailored to ensure that the entity truly responsible for non-compliance with MTSS incurs the penalty. However, OTIA while maintaining its position that this rule is unlawful, claims that penalties must be assessed to the responsible carrier of the customer, including resellers.

The Commission finds that despite the assertions of OTIA, Ameritech and AT&T this rule based on solid legal ground. Furthermore, despite Ameritech's assertion that the Commission lacks the authority to require automatic refunds, the present rules require a refund for service outages at Rule 4901:1-5-30(A), O.A.C., and have for at least the past 20 years. Furthermore, Section 4905.54, Revised Code, directs every utility or railroad to comply with every order, direction, and requirement of the Commission made under authority of chapters 4901, 4903, 4905 and 4909, Revised Code, and other chapters so long as they remain in force.

The Commission agrees that the entity responsible for violation of the MTSS should incur the penalty. However, the LECs, especially resellers, must accept the

responsibility of having adequate policies and procedures in place to provide the Commission and the Commission's Staff with sufficient evidence to ascertain the entity responsible for violation of MTSS in the event of a dispute, as well as incorporate provisions to address violations of MTSS into their negotiated agreements and contracts. Both underlying carriers and resellers must be held accountable to MTSS if all end-use customers are to receive an adequate level of service.

After considering the proposal made by Staff, as well as the comments made by the industry, the Commission concludes that Rule 4901:1-5-26, O.A.C., is unnecessary. Sections 4905.54 and 4905.381, Revised Code, grants the Commission the authority to impose forfeitures up to $1,000 and $5,000 per day, respectively, for each violation. The Commission does not believe it is necessary to include in the MTSS authority that is already granted to it by statute. Accordingly, proposed Rule 4901:1-5-26, O.A.C., should be eliminated in its entirety. However, affected entities are on notice that payment of a refund to the customer pursuant to adopted Rule 4901:1-5-18, O.A.C., does not obviate Commission application of Sections 4905.54 or 4905.381, Revised Code, or any other applicable section of the Revised Code where there have been numerous violations or a particularly egregious violation of the minimum telephone service standards.

## IV. CONCLUSION:

Due to implementation of the new MTSS rules, it may be necessary for telephone companies to amend their tariffs to reflect such changes. The companies are directed to work with Staff to ensure that appropriate tariff filings are provided to the Commission. In the meantime, and until such filings are approved to by the Commission, if a conflict exists between a company's tariff and the newly adopted MTSS, the adopted MTSS will prevail and must be followed by the company.

V. ORDER:

It is, therefore,

ORDERED, That the current Rules 4901:1-5-01 through 4901:1-5-36, O.A.C., shall be rescinded effective July 7, 1997. It is, further,

ORDERED, That the MTSS as discussed herein and attached to this Finding and Order are hereby adopted in final form as of the date of this Finding and Order. It is, further,

ORDERED, That a copy of this Finding and Order and the attached rules be filed with the Secretary of State and the Legislative Service Commission. It is, further,

ORDERED, That the adopted rules be effective July 7, 1997. It is, further

ORDERED, That the standards adopted shall apply to the carrier-to-carrier relationship as described in the Finding and Order. It is, further,

ORDERED, That nothing in the Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That this Finding and Order does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate either party from the provisions of any state or federal law which prohibits the restraint of trade. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all telecommunications service providers, including entities with pending applications, commentors to this proceeding and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Joynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

GNS/pdc

Entered in the Journal
JUN 26 1997

A True Copy

Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
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| In the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code. | ) ) ) ) | Case No. 96-1175-TP-ORD |

ENTRY ON REHEARING

The Commission finds:

(1) On June 26, 1997, the Commission issued its Finding and Order in this matter, establishing minimum telephone service standards (MTSS) for telecommunication service providers in Ohio.

(2) On July 1, 1997, the Ohio Telecommunication Industry Association (OTIA), which represents 42 local exchange telephone companies (LECs), filed a motion for a temporary waiver of the July 7, 1997 effective date for certain specified rules. Specifically, OTIA requested a temporary waiver of Rules 4901:1-5-06(B)(3); 4901:1-5-06(C); 4901:1-5-07(D) and (E); 4901:1-5-08(C); 4901:1-5-10(E); 4901:1-5-13(A) and (B); 4901:1-5-16(A)(8), (A)(14), (E) and (F); 4901:1-5-19(K)(3)(f) through (I); 4901:1-5-19(L)(3); and 4901:1-5-22(B)(3), Ohio Administrative Code (O.A.C.), (timing issue rules) which require that the LECs install certain central office equipment, and implement certain business practices or operating procedures. The waiver was requested because the LECs were unable to comply with the July 7, 1997 effective date.

(3) By entry issued July 2, 1997, pursuant to Rule 4901:1-5-01(B), O.A.C, the Commission temporarily waived the effective date of the timing issue rules until August 21, 1997 and directed companies that needed additional time to implement such rules to file a subsequent waiver request for the Commission's consideration. In the interim, LECs were permitted to continue to operate pursuant to the MTSS timing issue rules in effect prior to July 7, 1997.

(4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a proceeding may apply for a rehearing with respect to any matter determined in the proceeding by filing an application within 30 days of the order in the Commission's journal. The Commission may grant and hold

a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.

(5) Applications for rehearing were timely filed by Ashtabula County Telephone Coalition (Ashtabula) on July 17, 1997; on July 23, 1997 by Gail Minnick[1] (Minnick) and Sprint[2]; and Sprint Communications Co. L.P. (Sprint); and on July 28, 1997 by GTE North, The Edgemont Neighborhood Coalition (Edgemont), AT&T Communication of Ohio (AT&T), MCI Telecommunications Corp. (MCI), Ameritech Ohio (Ameritech), The Ohio Telecommunications Industry Association (OTIA)[3] and Ohio Consumers Counsel (OCC).

(6) Pursuant to Rule 4901-1-35, O.A.C., memoranda contra various aspects of any of the applications for rehearing were filed by MCI on August 6, 1997 and by OCC, Ameritech, AT&T, Telecommunications Resellers Association and OTIA on August 7, 1997.

(7) Pursuant to Section 4903.10, Revised Code, applications for rehearing in this matter were due no later than July 28, 1997. The applications of Ashtabula, Minnick and Sprint were filed prior to the July 28, 1997 deadline. By entry issued August 7, 1997, the Commission granted the applications for rehearing filed by Ashtabula, Minnick and Sprint solely to allow the Commission to consider the issues raised in the rehearing applications of Ashtabula, Minnick and Sprint with the issues raised in applications filed thereafter. By entry issued August 20, 1997, the Commission granted the applications for rehearing of the remaining filers to allow the Commission additional time to consider the issues.

**Timing Issue Rules**

(8) The Commission finds that the following standards do not reflect a true revision of the applicable service standards. The below listed rules are either substantially similar to prior standards or the Commission is unaware of any reason why implementation of the newly adopted standards, should be

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1 On July 25, 1997, a second document from Gail Minnick and Tammie Vuletich was docketed requesting reconsideration of specific information to be included in the information pages of the directory. Each of the filings signed by Gail Minnick will be considered as part of her application for rehearing.

2 Sprint was formerly known as United Telephone Company, the local exchange carrier.

3 Ameritech, GTE and Sprint each adopt and concur with the issues raised by OTIA in its application for rehearing in addition to each filing their own separate applications for rehearing.

further delayed. Accordingly, the below listed MTSS are effective immediately upon signing of this Entry:

Rule 4901:1-5-06(C)(1), (2), (3) and (4), O.A.C.
Rule 4901:1-5-06(C)(8), O.A.C.
Rule 4901:1-5-07(E), O.A.C.
Rule 4901:1-5-10(E), O.A.C.
Rule 4901:1-5-13(A), O.A.C.,
Rule 4901:1-5-13(B), O.A.C.,
Rule 4901:1-5-19(K)(3)(G), O.A.C.,
Rule 4901:1-5-19(L)(3), O.A.C.,
Rule 4901:1-5-22(B)(3), O.A.C.

(9) Furthermore, the waiver granted by entry issued July 2, 1997, as extended by entry issued August 21, 1997 shall expire on November 1, 1997 as to the following minimum telephone service standards and related appendices:

Rule 4901:1-5-06(B)(3), O.A.C.
Rule 4901:1-5-08(C), O.A.C.
Appendix A
Appendix B

(10) However, the Commission agrees with OTIA that the following standards may require the LECs to install certain central office equipment, implement modified business practices or operating procedures. Accordingly, the waiver granted by entry issued July 2, 1997, as extended by entry issued August 21, 1997, shall expire on January 1, 1998, as to the following minimum telephone service standards:

Rule 4901:1-5-06(C)(5), (6) and (7) O.A.C.
Rule 4901:1-5-16(A)(8), O.A.C.
Rule 4901:1-5-16(A)(14), O.A.C.
Rule 4901:1-5-16(E), O.A.C.
Rule 4901:1-5-16(F), O.A.C.
Rule 4901:1-5-19(K)(3)(F), O.A.C.,
Rule 4901:1-5-19(K)(3)(H), O.A.C.,
Rule 4901:1-5-19(K)(3)(I), O.A.C.,

(11) The Commission clarifies that all the directory provisions of Rule 4901:1-5-06(C), O.A.C., absent a Commission approved waiver extending such compliance, are effective with all directories distributed after January 1, 1998. Furthermore, the Commission notes that upon further consideration the